

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. 98-722

FOR
FRANK V. BORBA, MANUEL BORGES, JEANETTE BORGES
MANJEAN HOLSTEINS
SAN JOAQUIN COUNTY

This Order is issued to Mr. Frank V. Borba, Manuel Borges, Jeanette Borges, and Manjean Holsteins (hereafter jointly referred to as Discharger) based on provisions of California Water Code Section 13304, which authorizes issuance of a Cleanup and Abatement Order.

The Executive Officer finds, with respect to the Discharger's acts, or failure to act, the following:

1. Manjean Holsteins (the Facility) is at 10408 S. Van Allen Road, Stockton, in Section 1, T1S, R8E, MDB&M, in San Joaquin County. Manuel and Jeanette Borges operate the Facility. Mr. Frank V. Borba owns the real property where the Facility and associated cropland are located (Assessor's Parcel No. 205-180-01).
2. The San Joaquin County Assessor's map indicates that Parcel No. 205-180-01 is 316.30 acres which includes developed area and cropland. An expansion proposal map, dated 24 August 1992, states that in 1992 the Facility had 420 milk cows with a total of 732.2 animal units. The expansion proposal was for 760 milk cows and a total of 1373.7 animal units.
3. In May 1985 and in April 1986, records show that Mr. Frank Borba was notified by letters from the San Joaquin County Mosquito Abatement District that on both dates the inspections revealed drainage of liquid manure off property into the County roadside ditch. The letters notified Mr. Borba that Regional Water Quality Control Board's regulations require that all animal liquid waste must be contained on the property and stored in properly constructed holding ponds.
4. On 15 May 1991, Regional Board Staff received correspondence from Jeanette Borges describing correction being made to comply with wastewater regulations and prevent the discharge of wastewater from the calf pens to the roadside ditch along Van Allen Road.
5. On 30 March 1998, Regional Board Staff conducted an inspection of the Facility in response to a complaint alleging a discharge of wastewater from the Facility into the roadside ditch on the east side of Van Allen Road and thence into Temple Creek. The complainant stated that the discharge was observed on 27 March 1998. The inspection revealed a discharge of wastewater from a field north of the Facility into a tailwater drain that is parallel to the roadside ditch along the east side of Van Allen Road. The inspection report states that numerous breaks in the berm between the tailwater drain and the roadside ditch were observed and most of the wastewater was discharging into the ditch and flowing north and subsequently discharging into Temple Creek. Samples were delivered to the Department of Fish and Game Water Pollution Laboratory for analysis. Results of the analysis for Electrical Conductivity (EC) of the discharge from the roadside ditch to Temple Creek was 3700 $\mu\text{mhos/cm}$. The discharge to Temple Creek was estimated at approximately 30 gallons per minute. Mr. Borges indicated that due to heavy rains it had been necessary to pump

wastewater from his holding pond onto the field. He was advised to abate the discharge.

6. On 31 March 1998, Regional Board Staff conducted an additional inspection to determine whether the discharge had been abated. Rain was falling at the time of the inspection and the Facility was continuing to discharge into the roadside ditch along Van Allen Road. The EC reading of the discharge was 2000 $\mu\text{mhos/cm}$. The inspection report estimated that the total flow of wastewater into Temple Creek from 27 March through 31 March could have been over 250,000 gallons.
7. On 15 April 1998, the Regional Board issued a Notice of Violation in response to violations of the Clean Water Act and Title 27, Division 2, Chapter 7, Subchapter 2, Sections 22562(a) and 22563 of the California Code of Regulations.
8. Temple Creek is tributary to Lone Tree Creek which is tributary to the Delta. The beneficial uses of the Sacramento-San Joaquin Delta are domestic, municipal, industrial, and agricultural supply; stock watering, contact recreation; warm-water fish habitat, warm and cold-water fish migration, warm-water spawning; fish and wildlife habitat, and navigation.
9. Beneficial uses of groundwater in the area around the facility are domestic, municipal, industrial, and agricultural supply.
10. Title 27, Division 2, Chapter 7, Subchapter 2, Article 1, Section 22562 (a) of the California Code of Regulations (CCR) states, in part:

“Confined animal facilities shall be designed and constructed to retain all facility wastewater generated, together with all precipitation on, and drainage through, manured areas during a 25-year, 24-hour storm.”
11. The Discharger has violated Title 27, CCR, Section 22562(a) by failing to design and construct its confined animal facility to retain all facility wastewater generated, together with all precipitation on, and drainage through, manured areas during a 25-year, 24-hour storm; and has caused or permitted and threatens to cause or permit waste to be discharged into the waters of the state and has created, or threatens to create, a condition of pollution or nuisance.
12. Title 27, Division 2, Chapter 7, Subchapter 2, CCR contains the following discharge specifications for groundwater protection:
 - a. Manure storage areas shall be managed to minimize percolation of water into underlying soil.
 - b. Application of wastewater to cropland and disposal fields shall be managed to minimize the percolation to groundwater.

- c. Animal containment facilities shall have adequate surface drainage to prevent continuous accumulation of surface water in corrals and feed yards.
- d. Application of wastewater to cropland and disposal fields shall be at rates that are reasonable for the crop, soil, climate, special location situations, management system, and type of manure.

13. Section 13304(a) of the California Water Code provides that:

“Any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up such waste or abate the effects thereof or, in the case of threatened pollution or nuisance, take other necessary remedial action. Upon failure of any person to comply with such cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring such person to comply therewith. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the fact may warrant.”

14. Section 13304(c)(1) of the California Water Code provides that:

“If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising the cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and state board to the extent of the latter’s contribution to the cleanup costs from the State Water Pollution and Abatement Account or other available funds.”

15. Section 13267(b) of the California Water Code provides that:

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters of the state within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the

regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

16. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations.
17. Any person affected by this action of the Board may petition the State Water Resources Control Board to review the action. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED THAT, pursuant to Sections 13267 and 13304 of the California Water Code, Frank V. Borba, Manuel Borges, Jeanette Borges, and Manjean Holsteins shall:

1. Except in the case of runoff generated during a storm exceeding a 25-year, 24-hour event, immediately abate any and all discharges of manured wastewater into surface waters of the State.
2. Operate Manjean Holsteins in compliance with Title 27, Division 2, Chapter 7, Subchapter 2 of the California Code of Regulations.
3. Conduct daily inspections of waste holding areas and cropland being irrigated with wastewater and report any off-property discharge of wastewater containing manure to the Regional Board within 72 hours of discovering the discharge.
4. Reimburse the Regional Water Quality Control Board, the State Water Resources Control Board, the Department of Fish and Game, and any other state or federal agency providing assistance to the Regional Board in administering this Order for reasonable costs associated with oversight of actions taken in response to this Order. By **30 June 1998** submit the name and address to be used for billing purposes for reimbursement charges. Failure to provide the name and address and/or failure to reimburse the Regional Board for reasonable oversight costs shall be considered a violation of this Order.
5. By **15 July 1998**, submit plans and a construction schedule for permanent modifications to the wastewater distribution system and other portions of the dairy waste management system that will be completed by **30 September 1998** and that will prevent off-property discharges of wastewater containing manure. The plans shall be prepared and signed by a California Registered Engineer. Once approved by Regional Board Staff, the construction schedule shall become part of this Order and will be enforceable under this Order.

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6. By **19 October 1998**, submit a report describing the completed modifications to the dairy waste management system and any related improvements in wastewater management necessary to ensure that all wastewater is retained on the facility property.
7. By **19 October 1998**, submit a report presenting a nutrient and water balance study that is based on current animal units for the facility, including a description of any operational changes necessary to operate the facility in compliance with Title 27, Division 2, Chapter 7, Subchapter 2 of the California Code of Regulations.

This Order is effective upon the date of signature.

GARY M. CARLTON, Executive Officer

28 May 1998
(Date)

SJW